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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 565

HELEN YOUNG, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 38-42) is reported at 178 F. 2d 78.

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 1949 (R. 43), and a petition for rehearing was denied on January 3, 1950 (R. 44). The petition for a writ of certiorari was filed on January 30, 1950. The jurisdiction of this Court is invoked under 28 U. S. C. 1254(1).

See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTION PRESENTED

Whether the criminal sanctions of Section 1500 of the Servicemen's Readjustment Act of 1944 and Section 15 of the Act of March 20, 1933, c. 3, 48 Stat. 11, apply to one who, not being himself a veteran, knowingly causes a false certificate to be made concerning a claim for benefits under the 1944 Act.

STATUTES INVOLVED

The pertinent provisions of the Servicemen's Readjustment Act of June 22, 1944, c. 268, 58 Stat. 284, 291, as amended by the Act of December 28, 1945, 59 Stat. 623, are as follows:

> Sec. 500. [38 U. S. C. 694(a)] (a) Any person who shall have served in the active military or naval service of the United States at any time on or after September 16, 1940, and prior to the termination of the present war and who shall have been discharged or released therefrom under conditions other than dishonorable after active service of ninety days or more, or by reason of an injury or disability incurred in service in line of duty, shall be eligible for the benefits of this title. Any loan made by such veteran within ten years after the termination of the war for any of the purposes, and in compliance with the provisions, specified in this title, is automatically guaranteed by the Government by this title in an amount not exceeding fifty per centum of the loan: *Provided,* That the aggregate amount guaranteed

shall not exceed $2,000 in the case of non-real-estate loans, nor $4,000 in the case of real-estate loans; or a prorated portion thereof on loans of both types or combination thereof.

* * * * *

Sec. 501. [38 U. S. C. 694(a)] Any loan made to a veteran under this title, the proceeds of which are to be used for purchasing residential property or constructing a dwelling to be occupied as his home or for the purpose of making repairs, alterations, or improvements in property owned by him and occupied as his home, is automatically guaranteed if made pursuant to the provisions of this title, including the following:

(1) That the proceeds of such loan will be used for payment of the property purchased or constructed or improved;

* * * * *

(3) That the price paid or to be paid by the veteran for such property or for the cost of construction, repairs, or alterations does not exceed the reasonable value thereof as determined by proper appraisal made by an appraiser designated by the Administrator.

* * * * *

Sec. 1300. [38 U. S. C. 696k] Any claimant who knowingly accepts an allowance to which he is not entitled shall be ineligible to receive any further allowance under this title.

Sec. 1301. [38 U. S. C. 696l] (a) Whoever, for the purpose of causing an increase in any allowance authorized under this title, or for

the purpose of causing any allowance to be paid where none is authorized under this title, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any allowance under this title, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

* * * * *

Sec. 1500. [38 U. S. C. 697] Except as otherwise provided in this Act, the administrative, definitive, and penal provisions under Public, Numbered 2, Seventy-third Congress, as amended, and the provisions of Public, Numbered 262, Seventy-fourth Congress, as amended (38 U. S. C. 450, 451, 454a and 556a), shall be for application under this Act. For the purpose of carrying out any of the provisions of Public, Numbered 2, as amended, and this Act, the Administrator shall have authority to accept uncompensated services, and to enter into contracts or agreements with private or public agencies, or persons, for necessary services, including personal services, as he may deem practicable.

Public Law No. 2, 73d Cong., 1st sess., referred to in Sec. 1500 of the Servicemen's Readjustment Act of 1944, is the Act of March 20, 1933, c. 3, 48

Stat. 811, hereinafter referred to as the 1933 Act, Sec. 15 of which (38 U. S. C. 715) provides:

> Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such, concerning any claim for benefits under this title, shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

STATEMENT

On October 6, 1948, in the District Court for the Southern District of California, petitioner and Edythe L. Foxall were indicted in the first count of an indictment in six counts for conspiring, prior to March 1, 1946, and continuously thereafter to on or about October 6, 1948, to defraud the Veterans Administration in the administration of the Servicemen's Readjustment Act of 1944, in violation of 18 U. S. C. (1946 ed.) 88. Counts 2 and 3 charged petitioner and Foxall, and counts 4, 5 and 6 charged petitioner alone, with knowingly causing false certificates to be made concerning claims for benefits under the Act, in violation of Section 1500 of the Servicemen's Readjustment Act (38 U. S. C. 697) and Section 15 of the 1933 Act (38 U. S. C. 715).

(R. 2-11.) The substantive counts—2 to 6, inclusive—are identical except as to the dates, amounts and the veterans named therein, and count 2 is quoted here in pertinent part as typical of these counts (R. 5-6):

> * * * defendants Helen Young and Edythe L. Foxall did knowingly cause a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944 (38 U. S. C., Sections 694, et seq.); in that defendants did inform the Culver City Branch No. 366 of the Bank of America National Trust and Savings Association that the amount to be paid by Lloyd Shearer, a veteran of World War II, to purchase a lot and construct a house at 10813 Barman Avenue, Culver City, California, as to which a loan guarantee was being sought from the Government of the United States, was $9671.00, being made up of $1500.00 to purchase said lot and $8171.00 to construct such house, and did cause said bank to certify in a Home Loan Report presented to the United States Veterans Administration that the amount to be paid by such veteran to purchase such lot and to construct such house was $9671.00 and did not exceed the reasonable value thereof of $9700.00, as determined by a proper appraisal dated May 3, 1946, made by Harrison H. Crawford, an appraiser designated by the Administrator of Veterans' Affairs; whereas, as defendants well knew and caused to be concealed from said bank and the Veterans Administration, defendants had caused said veteran to sign a contract to pay

$2200.00 for such lot, and had caused said veteran to sign a contract to pay cost plus 10 per cent, with a minimum cost figure of $8200.00 and a maximum cost figure of $9000.00 for the construction of such house, and did demand from said veteran the sum of $9000.00 for such construction, or a total of $11,200.00 for such house and lot.

Prior to trial, the court denied petitioner's motion to dismiss the indictment on the ground that each count failed to state facts sufficient to constitute an offense against the United States (R. 12-13). At the close of the Government's case (R. 23-26) and again at the close of all the testimony (R. 27), petitioner moved for a judgment of acquittal on the same ground and the motion was in each instance denied (R. 26, 27). Over petitioner's objection, the court instructed the jury as follows (R. 27-30):

> Section 715 of Title 38 of the United States Code provides in part that:
>
> "Any person who shall knowingly make or cause to be made, * * * or in any wise procure the making or presentation of a false * * * certificate * * * concerning any claim for benefits * * *"
>
> under the Servicemen's Readjustment Act of 1944 shall be guilty of an offense.

The jury found petitioner not guilty on count 1, but guilty on each of the remaining counts (R. 14).

She was sentenced to one year's imprisonment and fined $1,000 on each of counts 2 to 6, the imprisonment sentences to run concurrently (R. 16). Execution of all the sentences was suspended, however, and petitioner was placed on probation for five years on condition, *inter alia*, that she make restitution to the veterans involved and pay a $2,000 fine. (R. 16-18.) On appeal, the judgment of conviction was affirmed (R. 43).

ARGUMENT

Petitioner's sole contention is that the act charged in each of counts 2 to 6 of the indictment, i. e., knowingly causing a false certificate to be made concerning a claim for benefits under the Servicemen's Readjustment Act of 1944, does not constitute a criminal offense under Section 1500 of that Act and Section 15 of the 1933 Act. She urges that Congress, in enacting Section 1500 of the 1944 Act, did not intend to make such act a crime, that even if it had, the statutory language does not accomplish that purpose, and that if any penalty attaches to the commission of such an act, it applies only to veterans claiming benefits under the 1944 Act (Pet. 10-15). We believe that the Court of Appeals was clearly right in rejecting petitioner's contentions.

In support of her contention that Congress, in enacting Section 1500 of the 1944 Act, did not intend to penalize the commission of the acts charged, petitioner relies on the presence of the limited penal

and disqualifying provisions in Sections 1300 and 1301 of the same Act, which relate only to false statements in connection with claims for unemployment allowances. The presence of these provisions, she urges, shows that Congress did not intend to adopt the broader penal provisions of Section 15 of the 1933 Act. (Pet. 14.) Such intent might properly be inferred if there were no other penal provisions in the 1944 Act. But in Section 1500 of that Act, Congress expressly provided that, "Except as otherwise provided in this Act, the * * * penal provisions" of the 1933 Act "shall be for application under this Act." Congress obviously intended that the provisions of Section 15 of the 1933 Act, punishing the making of any false or fraudulent statements, etc., should be applicable to all false statements in connection with claims for benefits under the 1944 Act except such statements as were covered by the penal provisions of that Act. The committee reports accompanying the 1944 Act categorically state that the purpose of Section 1500 was to make "applicable to all titles of the act * * * the administrative, definitive, or penal provisions of" the 1933 Act and to integrate the two statutes. S. Rep. No. 755, p. 14; H. Rep. No. 1418, 78th Cong., 2d sess., p. 16. Moreover, in refutation of petitioner's suggestion (Pet. 14) that Sections 1300, 1301 and 1500 are inconsistent and overlapping, the reports state that Section 1500 "would not carry forfeiture for fraud

under Title V [which contains Sections 1300 and 1301] inasmuch as the penalties for fraud under said title are specifically provided in" Section 1300. In other words, the penalty provisions of Sections 1300 and 1500 are simply directed at different acts. Title V of the 1944 Act deals entirely with unemployment allowances which, unlike the other provisions of the Act, are administered by state agencies instead of federal agencies. To avoid any possible question as to the inapplicability of the comprehensive penal provisions of Section 1500 to the making of false statements to state agencies, Congress enacted Sections 1300 and 1301. S. Rep. No. 755, *supra,* pp. 3, 10-14; H. Rep. No. 1418, *supra,* pp. 3-4, 14, 15.

Petitioner's contention that the language of Section 1500 of the 1944 Act is ineffective to make the act in question a crime is equally without merit (Pet. 10-13). The language employed in Section 1500, that the penal provisions of Section 15 of the 1933 Act "shall be for application under this Act" is "not ambiguous, nor is it uncertain to the extent of obscuring the legislative intent. The words convey a definite meaning which involves no absurdity, and they cannot be disregarded because that which they import could have been better expressed." (R. 42). Petitioner argues in support of this contention (Pet. 17) that Section 15 of the 1933 Act by its own terms does not and cannot apply to false statements in connection with applications for benefits under Sections 500 and

501 of the 1944 Act. She adds appeal to her contention by quoting 38 U. S. C. 715 rather than the original Section 15 because, in the code, there is a codifier's specification of sections to which section 715 applies. But no such enumeration appears in the 1933 Act itself. Moreover, as we have shown, Congress intended to integrate the two statutes. To accomplish that purpose in respect of providing penalties for false statements in connection with claims for benefits under both acts (with the exceptions noted in Section 1500 of the 1944 Act, *supra*, p. 4), it incorporated by reference Section 15 of the 1933 Act and by so doing made it as much a part of the 1944 Act as though it had repeated the applicable language of that section.[1] For this reason, *United States* v. *Evans*, 333 U. S. 483, upon which petitioner relies (Pet. 11), is inapposite. The statute involved in that case, while denouncing the concealing or harboring of aliens, provided penalties only for landing and bringing in aliens illegally.

The Washington Supreme Court decisions upon which petitioner also relies (*Bryant* v. *Stablein*, 28 Wash. 2d 739; *Ewing* v. *Ford*, 31 Wash. 2d 126; Pet. 15-17) involved suits for specific performance of contracts for the sale of real estate. The defense

[1] Cf. *Markham* v. *Cabell*, 326 U.S. 404, 411:

"* * * the normal assumption is that where Congress amends only one section of a law, leaving another untouched, the two were designed to function as parts of an integrated whole. We should give each as full a play as possible."

Cf. also *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 488.

in each case challenged the validity of the contract because the veteran purchaser allegedly agreed to pay more than the Veterans Administration's appraised value. The court in each case upheld the validity of the contract because "there is no penalty fixed for paying more or receiving more than the appraised value" (see Pet. 16). Even conceding the correctness of these decisions, they avail petitioner nothing. For, as we have shown, Section 1500 of the Servicemen's Readjustment Act of 1944 does penalize the making or causing of false statements in applications for loan benefits. The federal courts which have passed on the question have uniformly held, as did the court below, that there can be no doubt that Section 1500 penalizes the acts charged in counts 2-6 of the indictment.[2]

Finally, petitioner asserts (Pet. 15) that Section 15 of the 1933 Act can apply only to veterans who make false statements because it provides, *inter alia*, that "any person" making such a statement "shall forfeit all rights, claims, and benefits under this title, and, in addition to any and all other penalties imposed by law, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both. But Section 15 expressly applies to "Any person who shall knowingly make or cause to be made, or conspire, combine, aid, or assist in, agree to, arrange for, or

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[2] *United States* v. *Selph*, 82 F. Supp. 56, 58 (S.D. Cal.); *United States* v. *Oakland*, 81 F. Supp. 343 (W. D. La.).

in any wise procure the making or presentation of a false or fraudulent affidavit, declaration, certificate, statement, voucher, or paper, or writing purporting to be such." These provisions obviously apply to non-veterans as well as veterans.

CONCLUSION

There is no conflict of decisions, and no questions are presented meriting further consideration by this Court. It is respectfully submitted that the petition for a writ of certiorari should be denied.

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